STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES. *Petitioner*	:	
v.	:	RIDE No. 19-014 A
PROVIDENCE PUBLIC SCHOOL DEPARTMENT, *Respondent*	:	

In re Student M-B Doe

DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES. *Petitioner*	:	
v.	:	RIDE No. 19-036 A
PROVIDENCE PUBLIC SCHOOL DEPARTMENT, *Respondent*	:	

In re Student N-H Doe

CONSOLIDATED DECISION AND ORDER

Held: As the Commissioner has held on several other occasions, school districts are statutorily required to reimburse the state Department of Children, Youth and Families for the cost of educating children placed in private residential facilities at the district's special education per-pupil rate – which is higher than the general education rate – even if the child is a general education student who is not eligible to receive special education services, and thus DCYF's petitions for such reimbursement were both granted.

Date: June 15, 2020

On January 18, 2019 and February 8, 2019, Petitioner, Department of Children, Youth and Families ("DCYF"), filed separate requests for residency determinations and for the designation of the party responsible for the education of youths residing in a residential facility (the "Petitions") and requested that the Commissioner order Respondent, Providence Public School Department ("PPSD"), to reimburse it for the statutorily-mandated portion of the cost of educating two children, Students M-B Doe (in RIDE No. 19-014 A) and N-H Doe (in RIDE No. 19-036 A), who were at all relevant times in DCYF custody, and whom DCYF had placed in private residential treatment facilities that provide educational services.

I. Jurisdiction, Burden of Proof and Standard of Review

The Commissioner is required by statute "to interpret school law," R.I. Gen. Laws §§ 16-1-5(10) and 16-60-6(9)(viii), and to "require the observance" and "enforce the provisions of all laws relating to elementary and secondary education." R.I. Gen. Laws §§ 16-1-5(9) and 16-60-6(9)(vii). Thus, she has subject matter jurisdiction here, and DCYF has standing, under R.I. Gen. Laws §§ 16-64-1.2, 16-64-1.3 and 42-72-5(24), as well as under either R.I. Gen. Laws § 16-39-1, which covers disputes "arising under any law relating to schools or education." *Id.*

As in most proceedings before the Commissioner, the petitioner, in this case DCYF, has the burden of proof.[1] There are no material facts in dispute. As recognized by PPSD, "[t]he only issue before the Hearing Officer is what rate, whether special education or general, DCYF is entitled to . . ." *See* PPSD's Memorandum of Law dated January 22, 2020 ("PPSD Mem.") at 2. And the standard of review as to the relevant legal issue is *de novo*.[2]

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[1] *See Larue v. Registrar of Motor Vehicles, Dept. of Transp.*, 568 A.2d 755, 758-59 (R.I. 1990), citing *Gorman v. University of Rhode Island*, 837 F.2d 7, 15 (1st Cir.1988) (general presumption in administrative proceedings "favors the administrators" and places the burden of proof upon the party challenging the action "to produce evidence sufficient to rebut this presumption.").

[2] *See, e.g., Alba v. Cranston School Committee*, 90 A.3d 174, 184-85 (R.I. 2014) (quoting rule); *Slattery v. School Committee of City of Cranston*, 116 R.I. 252, 262, 354 A.2d 741, 747 (1976) ("one who appeals to the commissioner

II. Procedural Background

On August 9, 2019, DCYF filed the administrative equivalent of a motion for summary judgment, styled as *Motions for a Decision on Statement of Facts,* in both RIDE Nos. 19-014 A and 036 A (collectively, the "DCYF Motion"). The parties agreed that the DCYF Motion raised a common legal question, and thus the two cases were consolidated for administrative convenience, without prejudice to any right either party would have had in the absence of such consolidation.

On August 23, PPSD stated that while it was not contesting the facts alleged by DCYF, it did not agree with the Commissioner's prior holdings that school districts are statutorily required to reimburse DCYF for the cost of educating children placed in private residential facilities at the district's special education per-pupil rate, even if the child is a general education student who is not eligible to receive special education services, and wanted to "preserve an appeal."

III. Facts

As noted, the following facts in both RIDE Nos. 19-014 A and 036 A are not in dispute.

A. RIDE No. 19-014 A

1. Student M-B Doe was seventeen (17) years old at the time of the DCYF filing and was at all relevant times in DCYF custody.

2. M-B Doe's custodial parent resided at all relevant times in Providence, Rhode Island, and M-B Doe was not a child with a disability and was not entitled to special education services.

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is entitled to 'a *de novo* hearing' and not 'merely a review of [the] school committee action'"); *School Committee of City of Pawtucket v. State Bd. of Ed.*, 103 R.I. 359, 364, 237 A.2d 713, 716 (1968) (commissioner's jurisdiction "considerably broader than that of this court in reviewing an appeal" since "it is clear that § 16–39–2 and precursory legislation give the commissioner of education the right to make a de novo decision in examining and deciding the issue involved").

3. A written *Notice of Responsibility for a Child in State Care* as to M-B Doe was provided to PPSD by DCYF on or about March 19, 2018.

4. On May 3, 2018, M-B Doe was placed by DCYF at the Harmony Hill School ("Harmony Hill"), a private residential facility located in northern Rhode Island, and he resided and received educational services at Harmony Hill until September 28, 2018, a total of fifty-eight (58) days in Fiscal Year 2018 (which ended June 30, 2018), and for a total of eighty-nine (89) days in Fiscal Year 2019.

5. PPSD did not respond to DCYF's *Notice of Responsibility* and despite due demand, PPSD has refused to reimburse DCYF at its special education rate for the educational services provided M-B Doe while at Harmony, and has not to paid Harmony directly.

B. RIDE No. 19-036 A

1. Student N-H Doe was thirteen (13) years old at the time of the DCYF filing and was at all relevant times in DCYF custody.

2. N-H Doe's custodial parent resided in Providence, Rhode Island at all relevant times, and N-H Doe was not a child with a disability and was not entitled to special education services.

3. A written *Notice of Responsibility for a Child in State Care* as to N-H Doe was provided to PPSD by DCYF on or about April 3, 2018.

4. On May 8, 2018, N-H Doe was placed by DCYF at Harmony Hill, and he resided and received educational services there until June 21, 2019, a total of fifth-three (53) days in Fiscal Year 2018, and a total of three hundred and fifty-five (355) days in Fiscal Year 2019.

7. PPSD did not respond to DCYF's *Notice of Responsibility*, and despite due demand, PPSD has refused to reimburse DCYF at its special education rate for the educational services provided N-H Doe at Harmony Hill, and has not paid Harmony Hill directly.

C. PPSD's Statutory Per Pupil Education Rates

1. The daily per pupil special education rate for PPSD for Fiscal Year 2018 was $89.39, and the daily per pupil general education rate for that Fiscal Year was $47.32; as to Fiscal Year 2019, the special education rate for PPSD was $86.24, and the general education rate was $49.04.

IV. Positions of the Parties

1. DCYF

DCYF relied upon the above facts and argued that prior decisions of the Commissioner had made clear that PPSD was statutorily required to reimburse it for the cost of educating Students M-B Doe and N-H Doe while at Harmony Hill at PPSD's special education per-pupil rate, even though neither child was a special education student eligible to receive special education services.

2. PPSD

PPSD made the following five (5) legal arguments:

(1) that R.I. Gen. Laws § 16-64-1.l (a) "mandates that the responsible school district is liable for the child's education. It does not mandate that that school district subsidize DCYF or the child's residential placement in the process. The actual 'cost of education' provided is the extent of that liability and the analysis should end there." PPSD Mem. at 2-3;[3]

[3] R.I. Gen. Laws § 16-64-1.1(a) provides that:

> Children placed in foster care by a Rhode Island-licensed child-placing agency or a Rhode Island governmental agency shall be entitled to the same free, appropriate public education provided to all other residents of the city or town where the child is placed. The city or town shall pay the cost of the education of the child during the time the child is in foster care in the city or town.

Id.

(2) R.I. Gen. Laws § 16-64-1.l(c) "ma[kes] clear that a responsible school district must provide for the cost of that student's education. In these cases, involving students who are not entitled to special education services, that cost amounts to the number of days in placement, multiplied by the general education rate. There are two separate thoughts espoused in subsection (c), set forth in two sentences. The first sentence establishing broad parameters, and the second sentence concerning more particular circumstances dealing within the realm of special education. By its own terms, the second sentence is inapplicable to these cases. This is the only interpretation that makes sense and the relevant analysis should end here." *See id*. at 3;[4] and

(3) The Commissioner's holding in *DCYF v. Newport School Department*, RIDE No. 19-006 A (March 8, 2019) is incorrect since "[n]owhere" in R.I. Gen. Laws § 16-64-l.2(a) "is there any reference to an automatic right of reimbursement at the special education daily rate. And thus, extending out the Commissioner's reasoning, if the family court made the initial factual determination of residence pursuant to subsection (a), the identified district would only be responsible for the actual "cost of [the student's] education." However, according to the Commissioner's prior decisions, if RIDE makes the initial factual determination under subsection (b) or (c) the school district is responsible for the cost of the child's education at the special education daily rate regardless of the level of services provided. As such, the Commissioner's interpretation leads to a dichotomy based upon the entity that makes the initial factual determination of residence. This is certainly an absurd result which cannot be countenanced. *See id*. at 4-5, citing *Smiler v. Napolitano*, 911 A.2d 1035, 1041 (R.I. 2006); and

(4) The Commissioner's prior holdings "could easily lead to a construct in which a school district could choose to pay DCYF the higher special education daily rate or the general education rate to the facility itself. Ostensibly to avoid this embarrassment, DCYF has specifically instructed the residential facilities to bill school districts at the special education rate without reference or care to the level of services to which the students require. *See id.* at 5-6, citing Statement of Facts in 19-036A, ¶3, *supra* at 4, and the funding letter attached to DCYF's Petition; and

[4] R.I. Gen. Laws § 16-64-1.1(c) provides that:

> Children placed by DCYF in a residential-treatment program, group home, or other residential facility, whether or not located in the state of Rhode Island, which includes the delivery of educational services provided by that facility (excluding facilities where students are taught on grounds for periods of time by teaching staff provided by the school district in which the facility is located), shall have the cost of their education paid for as provided for in subsection (d) and § 16-64-1.2. The city or town determined to be responsible to DYCF for a per-pupil special-education cost pursuant to § 16-64-1.2 shall pay its share of the cost of educational services to DCYF or to the facility providing educational services.

Id.

(5) "The Commissioner's interpretation of the statutory framework also conflicts with the federal Individuals with Disabilities Education Act ("IDEA") as it overrides the authority of the IEP team that is charged under the Act with determining eligibility for special education services and placement, not to mention the IDEA's requirement that children be educated in the least restrictive setting." *See id*. at 6.

V. Decision

On March 8, 2019, the Commissioner rendered a decision holding that school districts are statutorily required to reimburse DCYF for the cost of educating children placed in private residential facilities at the district's special education per-pupil rate, even if the child is a general education student who is not eligible to receive special education services. *See DCYF v. Newport School Department,* RIDE No. 19-006 A (March 8, 2019). Since then, three (3) additional decisions with respect to the same issue were decided by the Commissioner. *See DCYF v. Cumberland School Department,* RIDE No. 19-034 A (May 21, 2019) (affirming the holding in *Newport School Department, supra*); *DCYF v. North Providence School Department,* RIDE No. 18-098 A (July 8, 2019) (denying school district's request that prior holdings be reconsidered); and *DCYF v. Burrillville School Department*, RIDE No. 051 K (February 12, 2020) (affirming precedent). And today, two more consolidated decisions can be added to the list.[5]

PPSD has not raised any material factual or legal issue which would distinguish the facts and law applicable here from the facts and law applicable in the decisions cited above. Thus, the Commissioner renews and hereby incorporates herein the rationale of the above decisions, which specifically addressed PPSD arguments 1-2, above, based upon the text of the relevant statutes.

[5] Along with the instant decision, the Commissioner is today issuing another consolidated decision disposing of three additional cases in which the exact same legal issue was raised. *See* Consolidated Decision in *DCYF v. Warwick School Department,* RIDE No. 18-096 P, *DCYF v. PPSD*, RIDE No. 18-104 P, and *DCYF v. PPSD*, RIDE No. 18-105 P.

See Newport School Department, supra, at 7-13; *Cumberland School Department, supra*, at 8-13; and *Burrillville School Department, supra*, at 5-6.

PPSD argument 3, above, is that "if the family court made the initial factual determination of residence pursuant to [R.I. Gen. Laws § 16-64-l.2 (a)], the identified district would only be responsible for the actual "cost of [the student's] education." *See* PPSD Mem. at 4-5. Yet, § 16-64-l.2 (a) makes no reference to costs. Moreover, PPSD failed to present any evidence to suggest that the reimbursement rates have actually differed depending upon who makes the residency determination. And while PPSD's baldly states in its argument 4, above, that the Commissioner's prior holdings "could easily lead to a construct in which a school district could choose to pay DCYF the higher special education daily rate or the general education rate to the facility itself," *see* PPSD Mem. at 5, it does not explain how the Commissioner's prior holdings supports such a result, nor does it present any evidence that direct payment by a school district to a third party provider at the general education rate has ever been tendered or accepted.

Indeed, PPSD arguments 3 and 4, above, are both effectively rebutted by the fact that, as the Commissioner noted in *Newport, supra*:

> . . . §§ 16-64-1.1, 16-64-1.2 and 16-64-1.3 were amended in 2001 so that all now refer exclusively to "the per-pupil special education cost," as quoted above. *See* P.L. 2001, ch. 77, art. 22, § 3; DCYF Mem. at 4-5. Thus while, as both parties note, the legislative history "clearly demonstrates the recognition by the Legislature of the two types of 'cost of education' namely 'general' or 'special education,'" *see* DCYF Mem. at 5; NSD Mem. at 4-5, this legislative awareness, coupled with statutory amendments that remove any mention of the general education rate in §§ 16-64-1.1, 16-64-1.2 and 16-64-1.3, hardly supports NSD's conclusion that the general education rate is applicable here.
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> In fact, the General Assembly's conscious choice in 2001 to remove any reference to the general education rate more logically reflects the Legislature's recognition that the actual cost of providing either general or special education services regularly exceeds even the higher special education per pupil rate.

Id. at 11.

Finally, PPSD claims in argument 5 that the prior holdings of the Commissioner would violate the IDEA and somehow "override the authority of the IEP team that is charged under the Act with determining eligibility for special education services and placement," and violate "IDEA's requirement that children be educated in the least restrictive setting." *See* PPSD Mem. at 6. A similar argument was made in *North Providence, supra*, where the School Department argued that the utilization of the statutorily-mandated rate of reimbursement somehow "labels" children as "disabled." *See id*. at 6. Yet here, as in *North Providence, supra*, the facts in evidence make such arguments inapplicable to students who are not eligible for special education services and who do not receive such services at the residential facility in which DCYF placed them for mental health treatment.

Thus, the Commissioner is once again required to affirm prior holdings and find that PPSD is statutorily required to reimburse DCYF for the cost of educating Students M-B Doe and N-H Doe while at Harmony Hill at PPSD's statutory special education per-pupil rate, even though neither child was a special education student.

VI. Order

For all of the above reasons:

1. RIDE Nos. 19-014 A and 19-036 A are hereby consolidated for purposes of administrative convenience, without prejudice to any right either party would have had in the absence of such consolidation;

2. As to RIDE No. 19-014 A, PPSD shall reimburse DCYF for the cost of the educational services provided to M-B Doe at Harmony Hill from May 3, 2018 to September 28, 2018, for a total of fifty-eight (58) days in Fiscal Year 2018 (at PPSD's daily per pupil special education rate of $89.39) and eighty-nine (89) days in Fiscal Year 2019 (at PPSD's daily per pupil special education rate of $86.24), **for a total due and owing in the matter of $12,859.98**;

3. As to RIDE No. 19-036 A, PPSD shall reimburse DCYF for the cost of the educational services provided to N-H Doe at Harmony Hill from May 8, 2018 to June 21, 2019, for a total of fifty-three (53) days in Fiscal Year 2018 (at PPSD's daily per pupil special education rate of $89.39) and three hundred and fifty-five (355) days in Fiscal Year 2019 (at PPSD's daily per pupil special education rate of $86.24), **for a total due and owing in the matter of $35, 352.87**; and

4. In the event that PPSD does not within thirty (30) days of the date of this decision, either (a) reimburse DCYF as per ¶¶ 2-3, above **in the combined grand total amount of $48,212.85**; or (b) enter into a stipulation with DCYF that provides an agreed-upon reimbursement schedule, the Commissioner shall, after notice to the parties, enter an order requesting that the state's General Treasurer withhold any unpaid balance from the state education aid to be paid to PPSD pursuant to, *inter alia*, RIGL § 16-64-1.2(d).

ANTHONY F. COTTONE, ESQ.,
as Hearing Officer for the Commissioner

ANGÉLICA INFANTE-GREEN,
Commissioner

Date: June 15, 2020